



STATE OF DELAWARE
JUSTICE OF THE PEACE COURT NO. 13
1010 CONCORD AVENUE
CONCORD PROFESSIONAL CENTER
WILMINGTON, DELAWARE 19802

TELEPHONE: (302) 577-2550

Village of Windhover
c/o Robert J. Valihura, Jr. Esq.
1203 N. Orange Street
Wilmington, DE 19801

v.

Civil Action: JP13-10-002615

Barbara Drake Haddad
Dorothy Drake
Village of Windhover Apts.
2808 Stone Place
Newark, DE 19702

ORDER

Trial De Novo heard May 5, 2010. The panel consisted of Bonita N. Lee, Deputy Chief Magistrate for New Castle County, Nancy C. Roberts, and Katharine B. Ross. Only Plaintiff Village of Windhover Apts. appeared represented by Robert Valihura, Esq.

At the trial below, Plaintiff was awarded a judgment for unpaid rent and late fees in the amount of \$973.00, possession and per diem at \$26.67. Plaintiff appealed the judgment demanding holdover rent pursuant to 25 Del. C. §5515(b). The Writ of Possession was posted April 26, 2010, and on April 27, 2010 possession was turned over to the landlord.

Pursuant to JP Court Civil Rule 55(b)(2), the Court requested that Plaintiff present testimony and evidence in support of a default judgment. General Assistant Manager Linda Grussemeyer testified that Defendants Barbara Drake Haddad and Dorothy Drake paid rent up until the end of the lease term, February 28, 2010. Yet she avers Defendant

¹25 Del. C. 5515(b) Landlord' remedies relating to holdover tenants.if the tenant continues in possession of the premises after the date of termination with the landlord's consent, such tenant shall pay to the landlord a sum not to exceed double the monthly rental under the previous agreement..."

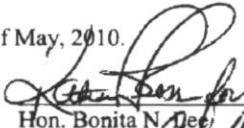
²JP Court Civ. Rule 55 Default judgments. (a)(2) By the Court. The party entitled to a judgment by default shall apply to the Court therefore. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damage or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings...

Barbara Drake Haddad continued to reside in the unit until evicted April 27, 2010. The evidence presented included 1) termination letter 2) five-day letter 3) tenant ledger and 4) lease agreement.

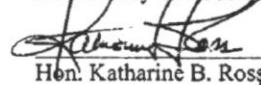
After considering the testimony and evidence the Court rejected Plaintiff's demand for holdover rent. Plaintiff initially filed this summary possession action seeking the contractual monthly rent of \$750.00 and possession. The filing did not include a demand for holdover rent as the lease term had not ended. Neither the termination notice nor the five-day notice included any mention or demand for double rent as a result of being a holdover tenant. Therefore there was no written notice to the tenant to forewarn of the increased rent that would be due if she failed to vacate the rental unit by the end of the term. Although Ms. Grussemeyer testified that she verbally informed the tenant about holdover rent, we believe the Code requires written notification. Additionally, there was no written request to amend the complaint to include holdover rent at the time of appeal.

In conclusion, the facts of this case do not support a finding in favor of Plaintiff for holdover rent pursuant to 25 Del. C. §5515(b). Plaintiff's request for double rent is denied. Judgment is therefore awarded in favor of Plaintiff Village of Windhover and against Defendant Barbara Drake Haddad in the amount of \$1,487.00 in rent and late fees plus \$41.50 court costs. Possession is no longer an issue. Defendant Dorothy Drake was dismissed from this action.

IT IS SO ORDERED this 6th day of May, 2010.


Hon. Bonita N. Lee


Hon. Nancy C. Roberts


Hon. Katharine B. Ross

